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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

12
13 SAN DIEGO COASTKEEPER, a non-profit)
14 corporation;)

15 Petitioner,)

16 vs.)

17 SAN DIEGO COUNTY WATER)
18 AUTHORITY, a public agency, and DOES 1)
19 through 5, inclusive,)

20 Respondents.)
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Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

(California Environmental Quality Act)

1 **PROJECT DESCRIPTION AND HISTORY**

2 7. The Project includes two programmatic plans addressing future water development and
3 conservation: the 2013 Regional Water Facilities Optimization and Master Plan Update (2013 Master
4 Plan Update) and the Climate Action Plan (CAP).

5 8. The Water Authority issued a Notice of Preparation on or about April 18, 2013. On or
6 about November 22, 2013, a Draft EIR regarding the Project was made available for public review.
7 The EIR discussed certain improvement projects as well as the CAP. It claimed the 2013 Master Plan
8 Update consisted of changes and updates to the Water Authority’s 2003 Regional Water Facilities
9 Master Plan emphasizing “maximizing efficiency of the existing system.” The EIR also claimed the
10 CAP was a greenhouse gas reduction plan to identify the Water Authority’s current emissions,
11 projected future emissions, emission reduction goals, and energy conservation opportunities.
12 Unfortunately, neither claim was correct. The 2013 Master Plan Update did not emphasize
13 maximizing efficiency but instead failed to provide for adequate conservation and efficiency.
14 Likewise, the CAP did not accurately account for current emissions or projected future emissions nor
15 did it adequately provide for emission reduction goals and energy conservation opportunities.

16 9. Several parties, including Petitioner, submitted comments on the Project and EIR, noting
17 these and other inadequacies. Commenters noted, *inter alia*, that the CAP reduction goals were
18 inconsistent with the CARB Climate Change Scoping Plan directives, that the CAP inventory and
19 reduction measures were inaccurate, that the CAP is not a qualified greenhouse gas reduction plan, that
20 the Master Plan failed to adequately consider conservation as an achievable “new water” resource, that
21 the Master Plan failed to adequately consider potable reuse as an achievable “new water” resource, that
22 the Master Plan failed to address “embedded energy” in the Water Authority’s energy use analysis or
23 energy management strategies, that the scope of operations used for determining baseline emissions in
24 the CAP was improperly limited, that the use of pumped storage as an offset for Project emissions was
25 unsupported, that the Project description omitted and obscured critical information, that the EIR failed
26 to adequately analyze growth inducing impacts, that the EIR failed to adequately analyze and mitigate
27 climate change impacts, that the Master Plan did not sufficiently consider the potential for
28 conservation and environmentally sustainable procurement, that the Project lacked enforceable

1 reductions measures, and that the emissions analysis was flawed. The comments generally expressed
2 substantial concern with the failure of the analysis to address the numerous Project impacts and to
3 analyze possible alternatives and mitigation to address those impacts.

4 10. Subsequently, the Supplemental Program Environmental Impact Report (“SPEIR”) was
5 prepared. The SPEIR concluded that all Project impacts would be mitigated to a less than significant
6 level. The SPEIR did not substantively or sufficiently address the comments on the draft EIR.

7 11. On March 27, 2014, the Water Authority’s governing board met to consider the Project and
8 SPEIR. Comments and testimony, including from Petitioner, was received regarding several aspects
9 of the Project and EIR. Again, commenters expressed substantial concern with the failure of the
10 analysis to address the numerous Project impacts and to analyze possible alternatives and mitigation to
11 address those impacts. The Water Authority’s governing board voted to approve the Project and
12 SPEIR. The Project approvals included certification of the SPEIR, adoption of a mitigation monitoring
13 and reporting program, and adoption of findings of fact.

14 12. A Notice of Determination was filed on March 28, 2014.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
16 **AND INADEQUATE REMEDIES AT LAW**

17 13. Petitioner has exhausted all available administrative remedies, and objections to the Project
18 have been presented orally and in writing to the Water Authority, as required by Public Resources
19 Code Section 21177. These include, but are not limited to, letters and oral comments presented during
20 public hearings.

21 14. Petitioner has complied with the requirements of Public Resources Code Section 21167.5
22 by mailing a written notice of commencement of this action to the Water Authority. A true and correct
23 copy of that notice is attached hereto as Exhibit 1.

24 15. Petitioner has advised the Water Authority that Petitioner has elected to prepare the record
25 of proceedings relevant to the approval of the Project, pursuant to Public Resources Code Section
26 21167.6. A true and correct copy of that notice is attached hereto as Exhibit 2.

1 27. Respondents' approval of the SPEIR constituted a prejudicial abuse of discretion in that the
2 SPEIR is not in accord with CEQA, the CEQA Guidelines, and case law, but rather is legally inadequate
3 and insufficient in numerous respects, including but not limited to, the following:

- 4 a. The Project description is not stable and finite, and is unclear, inconsistent, skewed,
5 inaccurate and incomplete in numerous respects;
- 6 b. The SPEIR fails to discuss the existing environmental conditions in the affected area,
7 including but not limited to, conditions on the ground and current planning conditions;
- 8 c. The SPEIR fails to analyze adequately the significant adverse direct, indirect and
9 cumulative effects of the Project, including but not limited to, the following:
- 10 i. Climate Change impacts, including but not limited to, failing to address
11 reasonably foreseeable impacts, failing to adequately account for current and
12 future Greenhouse Gas emissions, failing to provide a sufficient greenhouse gas
13 reduction plan, failing to meet AB 32 requirements, failing to ensure consistency
14 with California Executive Order S-3-05, failing to use proper criteria to identify
15 impacts to global warming, and failing to consider potential health impacts,
16 including cancer risk;
- 17 ii. Water supply impacts, including but not limited to, failing to address the
18 shortage of water in the area, failing to adequately provide for water
19 conservation and reuse, failing to demonstrate an adequate water supply, failing
20 to consider long-term water needs and supply, failing to provide an adequate
21 showing that water supply would be available, and failing to analyze the impacts
22 of the use of and demand for water;
- 23 iii. Air quality impacts, including but not limited to, failing to address reasonably
24 foreseeable impacts (including the contribution of pollutants, grading related
25 impacts, and the lack of attainment of air quality standards), failing to use proper
26 criteria to identify impacts to air quality, and failing to consider potential health
27 impacts, including cancer risk;
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- 1 iv. Land use and community character impacts, including but not limited to, failing to
2 address requirements for parks and recreation, failing to address inconsistencies
3 with relevant habitat planning programs, failing to address effects on the physical
4 conditions as they existed at the time of the environmental analysis, and failing to
5 address impacts to neighborhood and community character;
- 6 v. Visual quality and aesthetics impacts, including but not limited to, failing to
7 address impacts to existing resources, failing to address impacts associated with
8 lighting;
- 9 vi. Transportation and traffic impacts, including but not limited to, failing to
10 consider existing conditions, failing to address reasonably foreseeable impacts to
11 traffic and traffic safety (including construction traffic, increased traffic,
12 additional delays, narrow roads, overcrowded roads and intersections, additional
13 accidents, reduced access, and shifts in travel routes), failing to address impacts
14 associated with existing failing streets and roads, failing to consider all
15 roadways (including regionally significant arterials, freeways, ramps, and
16 interchanges), failing to recognize the Project's impacts in relation to existing
17 problems and failing streets and intersections, failing to address safety
18 considerations associated with existing and Project traffic, using inaccurate
19 baseline data, failing to assess impacts on alternative transportation (such as
20 public transit, pedestrian and bicycle usage), failing to address the Project's
21 impacts on area roads and intersections, using incorrect criteria to determine
22 impacts, failing to consider sight distance, failing to consider impacts if
23 mitigation is not fully funded, failing to address impacts to and from parking,
24 relying upon unsupported models and data, using unsupported assumptions,
25 failing to consider an appropriate share of mitigation for Project impacts, failing
26 to analyze adequately impacts to intersections, and failing to analyze all affected
27 areas;
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- 1 vii. Hydrological and water quality impacts, including but not limited to, failing to
2 address reasonably foreseeable impacts and the introduction of pollutants to
3 groundwater and surface water, failing to discuss post-construction impacts,
4 failing to address drainage impacts, and failing to consider criteria for mitigation
5 to impacts;
- 6 viii. Noise impacts, including but not limited to, failing to consider existing noise
7 conditions, failing to address reasonably foreseeable impacts, failing to consider
8 all likely sources of noise, failing to address impacts caused by proposed
9 mitigation, failing to apply applicable standards appropriately, failing to
10 consider likely future noise sources, and relying upon unsupported models and
11 data;
- 12 ix. Biological resource impacts, including but not limited to, failing to address impacts
13 to open space, failing to address impacts to sensitive habitats and plant and animal
14 species, failing to consider impacts of biological resources below the soil, failing to
15 consider post-construction impacts, failing to consider impacts to non-native
16 grasslands, failing to address impacts of mitigation proposed, failing to address
17 impacts to wildlife corridors and wildlife movement, failing to address impacts
18 associated with lighting, failing to protect important resources, relying upon old
19 and inadequate survey data, lack of a synthesized project analysis, failing to
20 provide a regional context, failing to address impacts to wetlands and wetland
21 species, failing to address impacts associated with construction and dredging,
22 failing to provide for adequate protection of riparian areas, and failing to address
23 impacts to other species of concern;
- 24 x. Archaeological and paleontological resource impacts, including but not limited
25 to, relying upon old and unreliable surveys, failing to adequately analyze
26 impacts, and inadequately disclosing sites;
- 27 xi. Historic and cultural resource impacts, including but not limited to, failing to
28 consider all available resources, failing to consider the entire extent of the

1 resource, relying upon improper methods of survey and analysis, failing to
2 adequately analyze impacts, and inadequately disclosing resources and impacts;

3 xii. Agricultural resource impacts, including analyzing existing uses and failing to
4 consider adequate mitigation for impacts;

5 xiii. Public facilities and services impacts, including but not limited to, failing to
6 address impacts to parks and recreation, solid waste, electricity, energy, and
7 wastewater services, failing to ensure clean energy sources for the movement
8 and treatment of water, and failing to bundle water and energy system
9 improvements;

10 xiv. Growth-related impacts, including growth inducement associated with the
11 Project.

12 d. The SPEIR fails to consider adequately the cumulative impacts of the Project and other
13 projects that are either existing, approved, planned, or reasonably foreseeable, including
14 future road projects and other developments located both within and outside of
15 Respondents' physical boundaries;

16 e. The SPEIR illegally defers analysis of reasonably foreseeable impacts;

17 f. The SPEIR improperly segments the Project, piecemealing or otherwise avoiding
18 reasonably foreseeable impacts, and separately focusing on isolated parts of the whole;

19 g. The SPEIR fails to consider adequately impacts that narrow the range of beneficial uses
20 of the environment, in violation of Section 15126(e) of the CEQA Guidelines;

21 h. The SPEIR fails to address adequately impacts that cannot be mitigated, including but
22 not limited to, describing their implications and the reasons why the Project is being
23 proposed notwithstanding its adverse effects;

24 i. The SPEIR fails to consider adequately the significant irreversible effects of the Project,
25 in violation of Section 15126(f) of the CEQA Guidelines, including but not limited to,
26 climate change impacts; air quality impacts; impacts to biological resources; increased
27 erosion rates; and energy use impacts;

- 1 j. The CAP is not a qualified greenhouse gas reduction plan under CEQA Guidelines
2 Section 15183.5.
- 3 k. The SPEIR impermissibly defines the Project objectives in a way to attempt to preclude
4 discussion of reasonable alternatives;
- 5 l. The SPEIR fails to provide an adequate programmatic level of analysis sufficient to
6 allow tiering.
- 7 m. The SPEIR fails to analyze adequately a reasonable range of alternatives to the Project,
8 which could reduce substantially Project related impacts, and to evaluate the
9 comparative merits of the alternatives;
- 10 n. The SPEIR fails to analyze adequately feasible mitigation measures, fails to provide for
11 mitigation for each environmental effect, illegally relies upon deferred mitigation
12 measures, and fails to provide for effective and enforceable mitigation; and

13 28. Respondents failed to respond adequately to public comments.

14 **THIRD CAUSE OF ACTION**
15 **(FAILURE TO ADOPT A STATEMENT OF OVERRIDING CONSIDERATIONS THAT IS**
16 **SUPPORTED BY EVIDENCE IN THE RECORD)**

17 29. Petitioner incorporates by reference each of the allegations set forth in this Petition as if set
18 forth herein in full.

19 30. Respondents failed to adopt a Statement of Overriding Considerations that is supported by
20 substantial evidence in the record despite the Project's significant environmental impacts.

21 **FOURTH CAUSE OF ACTION**
22 **(FAILURE TO ADOPT FEASIBLE MITIGATION MEASURES AND ALTERNATIVES**
23 **REQUIRED BY CEQA)**

24 31. Petitioner incorporates by reference each of the allegations set forth in this Petition as if set
25 forth herein in full.

26 32. Respondents failed to consider and adopt feasible alternatives, including but not limited to,
27 alternatives requiring less impacts that meet some or all of the Project objectives.

28 33. Respondents defined the Project and its objections too narrowly, resulting in a narrowing of
the consideration of alternatives.

34. Respondents failed to adopt the environmentally superior alternative.

1 35. Respondents failed to consider and adopt feasible mitigation measures, failed to mitigate for
2 each environmental effect, illegally deferred mitigation, and failed to provide for effective and enforceable
3 mitigation.

4 **FIFTH CAUSE OF ACTION**
5 **(FAILURE TO USE THE CORRECT BASELINE AS REQUIRED BY CEQA)**

6 36. Petitioner incorporates by reference each of the allegations set forth in this Petition as if set
7 forth herein in full.

8 37. Respondents failed to use the correct baseline for the Project in its environmental analysis.

9 **SIXTH CAUSE OF ACTION**
10 **(FAILURE TO ADOPT FINDINGS THAT ARE SUPPORTED BY EVIDENCE IN THE**
11 **RECORD)**

12 38. Petitioner incorporates by reference each of the allegations set forth in this Petition as if set
13 forth herein in full.

14 39. Respondents failed to adopt findings that are supported by substantial evidence in the
15 record. Among other things, the findings assert that the Project's mitigation measures adequately
16 reduce impacts below a level of significance without adequate evidence in the record to support such
17 findings, the findings assert that mitigation measures are infeasible without an adequate consideration
18 of feasible mitigation and without an adequate showing of alleged financial infeasibility, and the
19 findings assert that the Project will be consistent with existing legal requirements where there is
20 insufficient evidence to support such consistency findings.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner prays for relief as follows:

23 A. For a temporary restraining order, preliminary injunction and/or permanent injunction
24 enjoining Respondents from taking any steps to further the Project until lawful approval is obtained from
25 Respondents after the preparation and consideration of adequate environmental analysis, with adequate
26 notice to interested parties, adoption of findings supported by substantial evidence, and compliance with
27 applicable requirements;

28 B. For alternative and peremptory writs of mandate, vacating approval of the SPEIR and all
aspects of the Project, and enjoining Respondents from taking any steps to further the Project until lawful

1 approval is obtained from Respondents after the preparation and consideration of adequate environmental
2 analysis, with adequate notice to interested parties, adoption of findings supported by substantial evidence,
3 and compliance with applicable requirements;

4 C. For costs of suit;

5 D. For reasonable attorneys' fees; and

6 E. For such other and further relief as the Court deems just and proper.

7 DATED: April 25, 2014

Respectfully Submitted,

8 **DELANO & DELANO**

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10 By: 

11 Everett L. DeLano III
12 M. Dare DeLano
13 Attorneys for Petitioner
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VERIFICATION

I have read the foregoing Verified Petition for Writ of Mandate and know its contents.


.. I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

X I am an officer of San Diego Coastkeeper, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

.. I am one of the attorneys for _____ a party to this action. Such party is absent from the County San Diego, California, where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe that on that ground allege that the matters stated in it are true.

Executed on April 25, 2014 at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Megan Bachrens, San Diego Coastkeeper

EXHIBIT 1



DELANO & DELANO

April 24, 2014

VIA FACSIMILE AND U.S. MAIL

Thomas V. Wornham, Chair, Board of Directors
Maureen Stapleton, General Manager
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Re: Notice of Intention to Commence Action Under the California Environmental Quality Act

Dear San Diego County Water Authority:

Please take notice that San Diego Coastkeeper intends to commence an action in California Superior Court, alleging, among other things, violations of the California Environmental Quality Act ("CEQA") against the San Diego County Water Authority to challenge the approvals of the 2013 Regional Water Facilities Optimization and Master Plan Update and the Climate Action Plan, including certification of the Supplemental Program Environmental Impact Report, adoption of a mitigation monitoring and reporting program, and adoption of findings of fact ("Project"). Among other things, the petition will seek to vacate the approval of the Project, and to enjoin the Water Authority from taking any further steps to implement the approvals.

If the Water Authority would like to discuss these concerns and their possible resolution, please contact the undersigned immediately. Thank you for your attention to this matter.

Sincerely,


Everett DeLano

EVERETT L. DELANO III
Admitted in California and Colorado

M. DARE DELANO
Admitted in California and New York

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EXHIBIT 2